

1 Scott M. Clark, Esq. (Bar No. 6759)
2 Paul A. Henderson, Esq. (Bar No. 22891)
3 Judy Drickey-Prohow, Esq. (Bar No. 5796)
4 Christopher R. Walker, Esq. (Bar No. 28977)
5 **LAW OFFICES OF SCOTT M. CLARK, P.C.**
6 3008 North 44th Street
7 Phoenix, Arizona 85018-7206
8 Telephone: (602) 957-7877
9 Facsimile: (602) 957-7876
10 *Attorneys for Commenting Party Arizona Multihousing Association*

11
12 **IN THE SUPREME COURT**
13
14 **IN AND FOR THE STATE OF ARIZONA**

15 **PETITION TO ADOPT RULE 9.1,**
16 **RULES OF PROCEDURE FOR**
17 **EVICITION ACTIONS**

Supreme Court No. R-13-0047

**Comment in Opposition to the Adoption
of Rule 9.1, RPEA**

18 Pursuant to Rule 28, Rules of the Supreme Court, the Arizona Multihousing Association
19 respectfully comments in opposition to the petition by the Legal Services Committee of the
20 State Bar to adopt Rule 9.1, Rules of Procedure for Eviction Actions. The proposed change of
21 judge rule was omitted from the adopted version of the Rules of Procedure for Eviction
22 Actions. Its adoption now will provide an unnecessary avenue for delay in the summary
23 proceedings of forcible and special detainer actions.

24 **I. STATEMENT OF INTEREST**

25 The Arizona Multihousing Association is a professional trade association representing
26 over 2,200 members and 210,000 rental units in the State of Arizona. Its members include
owners of large multi-family properties, property management companies, developers,
individual rental owners and the vendors that serve this vital industry. The Association was
formed in 1966 to promote industry professionalism, create educational opportunities, and
engage in government relations.

The undersigned has been counsel to and is currently a board member of the Arizona

1 Multihousing Association. He has represented landlords and property owners for nearly thirty
2 years. He was also one of the members of the State Bar Landlord/Tenant Task Force.

3 4 **II. BACKGROUND**

5 In considering the initial draft of the RPEA, the Supreme Court struck the proposed
6 Rule 11(e), which is analogous to the proposed Rule 9.1. The Legal Services Committee of the
7 State Bar of Arizona (hereinafter "LSC") itself conceded the issue of unilateral introduction of
8 a peremptory right of challenge after the Court's initial review analysis proposed striking Rule
9 11(e); it recommended instead the introduction of a limited challenge for situations where the
10 various Justice Courts were co-located. *See* LSC's November 13, 2008 Comment, p. 2 ll. 22-25.
11 Despite this Court declining such a modified rule when it adopted the final version of the
12 RPEA, the LSC seeks to revisit this issue.

13 14 **III. OPPOSITION TO THE ADOPTION OF RULE 9.1**

15 **A. The right to challenge for cause is already established by statute.**

16 The adoption of Rule 9.1 is unnecessary. In the Justice Courts, where the vast majority
17 of eviction cases are heard, litigants possess the ability to challenge the sitting Justice of the
18 Peace if the litigant believes he/she cannot obtain a fair trial:

19 If either party in an action pending in a justice court, after the answer has been filed, files an
20 affidavit in the action alleging any of the grounds specified in subsection B of this section and
gives five days' notice to the opposite party, the venue may be changed as provided by law.

21 A.R.S. § 22-204(A). Those grounds include "prejudice" and "the ends of justice." A.R.S. § 22-
22 204(B).

23 Assuming, *arguendo*, that LSC's proposal was made solely for the litigant's concern that
24 he or she cannot obtain a fair trial, the mechanism being sought and proposed already exists in
25 statute.

1 **B. By design, venue is inseparable from the judicial officer in the Justice of**
2 **the Peace Courts.**

3 Moreover, venue is personal to the Justice of the Peace (“J.P.”); each J.P. is elected by
4 the voters of the precinct to serve as the judicial officer for that specific precinct. A.R.S. § 22-
5 102. A peremptory change of judge changes not just the jurist but the electorate from which
6 the jurist was chosen, because most peremptory challenges will cause the case to be transferred
7 from the precinct. The change thus deprives the voters of the judge they elected.

8 A peremptory challenge is also akin to forum-shopping because it undercuts the nature
9 of the Justice of the Peace courts. While there exist five courthouses where multiple Justice of
10 the Peace courts are co-located (Northwest Regional Court Center, Northeast Regional Court
11 Center, San Tan Regional Court Center, and Downtown Justice Facility in Maricopa County;
12 the Consolidated Justice Courts in Pima County), the vast majority of these courts – and all
13 outside the two most populous counties in the state – occupy stand-alone complexes where
14 only a single Justice of the Peace is present. Under normal circumstances, there is no other
15 jurist available to hear the matter in stand-alone courthouses at the same time as which it was
16 set. A peremptory change of judge will require the matter to be reset to another day, even
17 before the setting of a trial, to either transfer it to another court or bring in a Judge Pro Tempore.
18 Consequently, a peremptory challenge is, in essence, a delay.

19
20 **C. LSC’s arguments enshrine “delay” in the proposed purpose.**

21 The Association does not deny that tenants have a vested interest in the disposition of
22 their housing. These cases are designed to be adjudicated promptly. Eviction actions, which
23 are “statutory summary proceedings and the statutes establishing them govern their scope and
24 procedure” (Rule 2, RPEA), are meant to “provide a summary, speedy and adequate means for
25 obtaining possession of premises by one entitled to actual possession.” Heywood v. Ziol, 91
26 Ariz. 309, 311, 372 P.2d 200, 201 (1962).

1 LSC, however, argues that lower-income individuals will suffer from the effects of an
2 eviction judgment, claiming that "on short notice [the eviction] can lead to the disruption [...] and homelessness." Petition, 5:17-19. By addressing this matter in this light, LSC focuses on
3 the issue of time, which does not argue (in)justice, but instead seeks to postpone the effect of
4 the eviction judgment. This argument is directly contrary to the requirements of Rule 11(c),
5 because delay is not "good cause" under the RPEA or a defense to an eviction action.
6

7
8 **IV. CONCLUSION**

9 If the litigant in the Justice of the Peace courts believes that the J.P. will not serve as an
10 impartial jurist, the litigant has the statutory ability to challenge the jurist for cause. LSC already
11 has the recourse it seeks for challenging the jurist for cause through what the Legislature has
12 provided to all parties appearing in the Justice of the Peace courts. The adoption of Rule 9.1,
13 on the other hand, will unnecessarily introduce delay into these summary proceedings.

14 For these reasons, the Association respectfully requests the Court deny the petition.

15 RESPECTFULLY SUBMITTED this day, the 20th of May 2014.

16
17 By 

18 **Scott M. Clark, Esq.**

19 Law Offices of Scott M. Clark, P.C.

on behalf of the **Arizona Multihousing Association**

20 An electronic copy of this Comment in two formats was filed with the Clerk of the Supreme Court of
21 Arizona.

22 A copy was mailed and emailed to the following individual(s):

- 23 • John A. Furlong, Esq.
24 General Counsel
25 State Bar of Arizona
26 4201 North 24th Street, Suite 100
Phoenix, Arizona 85016
John.Furlong@staff.azbar.org

By 

on May 20, 2014